Since the payment of the preference was in itself unassailable, it should be considered as having at once discharged the surety *pro tanto*. The justice of the holding as to the creditor who had no other claim is apparent. It seems therefore that as to the amount the principal paid to the other creditor, the surety should be discharged, and so cannot equitably be forced to pay it back and take a dividend. If the preference is not restored by one or the other, the surety, of course, cannot recover the amount he has paid on the debt, and the creditor should not be allowed to prove his other debts. If the money is refunded, proof in both these cases is proper. Who shall make the payment would seem under the circumstances a question for the parties to settle among themselves, and a matter of indifference to the court, supplying therefore no ground for intervention.

CORONERS' VERDICTS AS EVIDENCE IN SUBSEQUENT TRIALS. — The office of coroner, though often stated as dating from the statute of Edward I., is apparently of more ancient origin. 1 POLL. & MAIT., HIST. ENG. LAW, 583. His duties are both ministerial and judicial at common law. 1 Bac. Abr., 6th ed., 756. Of these the chief one is to conduct an inquisition before six jurymen into the causes of the death of persons coming to a violent or sudden end within his jurisdiction. Their verdict must be signed and sealed and handed to the proper authorities. In the old days this verdict was held in cases of suicide, or *felo de se*, to be conclusive against the executor of the deceased. 3 CO. INST. 55. And a verdict of acquittal in favor of one accused by the coroner's jury was not received by the judge unless the jury also found who or what had caused the death of the deceased. 13 Edw. IV. c. 3, pl. 7. Lord Hale, however, was of the opinion that this rule was most unjust, and he practically changed the law, making all findings of an inquisition traversable. 1 HALE, P. C., 416, 417. He cited as authority for this a record in the Exchequer, East 45 Edw. III., where the jury found adversely to the inquisition. A refinement appears later that the finding a deceased not *felo de se* is not traversable, nor a *fugam fecit*, though the affirmative finding is. 1 Wms. Saund. 663. And lunacy and *post mortem* inquisitions are somewhat similarly treated, being considered as good evidence, but not conclusive. *Sergeson* v. *Sealey*, 2 Atk. 411; *Burridge* v. *Lord Sussex*, 2 Raym. 1292.

The modern law draws a distinction between inquisitions of lunacy, of office, etc., and coroners' inquests. The former are generally considered as admissible evidence, but not conclusive. *Stokes* v. *Dawes*, 4 Mass. 268. The principle of their admissibility is apparently that they are matters of public and general interest, and have peculiar guaranties for accuracy and fidelity. GREENL., EV., 15th ed., § 556. One authority considers them similar to judgments *in rem*, in that they are equally admissible against strangers as well as parties, but dissimilar in that they are not conclusive against anybody. 2 TAYL., EV., 6th ed., § 1487. The distinction noted seems clearly tenable on the ground that inquisitions determine *status*, whereas coroners' inquests find facts. The law with regard to the latter proceedings is in square conflict. In civil suits some courts have admitted the verdict in evidence as the result of proceedings of a judicial nature, or as the act of a public officer under official oath and in discharge of a public duty. *Lancaster* v. *Mishler*, 100 Pa. St. 624; *United States, etc., Ins. Co.* v. *Vocke*, 129 Ill. 557. But

in similar actions an opposite result has been reached as a matter of policy, and on the ground that the duty was not a judicial one. *Insurance Co.* v. *Lewin*, 24 Col. 43; *State* v. *County Com'rs*, 54 Md. 426. In criminal cases the law, though meagre, is to-day practically universal that the verdict of a coroner's jury is inadmissible at the subsequent trial, even as *prima facie* evidence. *Crisfield* v. *Perine*, 15 Hun (N. Y.) 200; *Colquit* v. *State*, 64 S. W. Rep. 713 (Tenn.). Yet in Louisiana the verdict, though not competent as proof of crime, is admissible to show the fact of the deceased's death. *State* v. *Parker*, 7 La. Ann. 83. And in at least one jurisdiction depositions taken before the coroner are admissible to impeach the credibility of a witness. *People* v. *Devine*, 44 Cal. 452.

The exclusion of this form of evidence seems proper. It is purely hearsay, and is the mere opinion of a lot of men hurriedly gathered together, who have not time to look into the facts carefully, and who have had only slightly better opportunities of discovering the truth than the trial jury itself. Lastly, it is peculiarly dangerous, being much open to abuse by the jury. It is a temptation to them to use some other men's judgment instead of their own. A sound policy removes all such temptations from the jury whenever possible.

INTERFERENCE WITH LIGHT AND AIR BY ELEVATED RAILROADS. — In a recent decision the New York Court of Appeals reached a conclusion seemingly inconsistent with the position of that court in the famous elevated railway cases. An action was brought for injury to the plaintiff's easements of light and air by the operation of the defendant's railroad upon an elevated structure in Park Avenue, New York City. The defendant had acquired the right to run its trains in front of the plaintiff's property in a depressed cut through the centre of Park Avenue. In 1892 the State Legislature enacted a bill providing for the erection of a viaduct upon which the defendant's trains should be operated and the filling in and opening up of the depressed cut for general street purposes. The work was to be done under the direction of a board appointed by the mayor, one half of the expense being paid by the defendant and the remainder raised by assessment upon property benefited. The defendant was directed to run its trains upon the structure when completed. Pursuant to this act the viaduct was erected and in 1897 the defendant began running its trains upon it. The plaintiff claimed damages for the injury to his light and air from that date. By a divided court recovery was denied. *Fries* v. *N. Y. & H. R. R.*, 169 N. Y. 270. The position taken by the prevailing opinion was that the injury to the plaintiff arose in consequence of the grading of the street and was therefore *damnum absque injuria;* that the injury was caused by the act of the state and not by that of the defendant; and, finally, that if the defendant in operating its trains trespassed upon the property rights of the plaintiff the proper remedy was an attack upon the constitutionality of the act, which question could not be raised for the first time in the Court of Appeals.

The decision seems inconsistent with the established New York doctrine that an injury to easements of light and air by the operation of an elevated railroad constitutes a taking of property within the meaning of the constitution. *Story* v. *N. Y. El. R. R.*, 90 N. Y. 122. The improvement in question is obviously something more than the grading of a